ORIENTAL RUBBER & OIL PALM SDN. BHD.

v.

PEMUNGUT HASIL TANAH, KUANTAN

HIGH COURT MALAYA, KUANTAN
VC GEORGE J
[ORIGINATING MOTION NO. 21 OF 1981]
29 JULY 1982

LAND LAW: *Acquisition of land - Objection that award grossly inadequate referred to Court - True market value - Whether as at date of s. 8 notification or date enquiry commenced.*

CIVIL PROCEDURE: *Application for removal of decision and award into High Court by writ of certiorari - Preliminary objection by summons-in-chambers - Jurisdiction.*

The Government of the State of Pahang, pursuant to its declared intention under s. 4 of the Land Acquisition Act 1960 ("the Act") published the necessary s. 8 declaration in the *Gazette* dated 29 August 1974 in respect of several parcels of land owned by the applicants. The enquiry by the Collector of Land Revenue under s. 10 was, however, commenced only in December 1980 and completed in January 1981. The offer of compensation was made in April 1981. The award was based on the market value of the parcels of land as at the dates of the s. 8 notifications.

Pursuant to s. 37 and as prescribed by s. 38(1) of the Act, the applicants filed with the Collector an application that an objection, that the award was grossly inadequate, be referred to the High Court. Realising, however, that according to the provisions of the Act the market value of the land had to be as at the date of the s. 8 *Gazette* notifications, the applicants obtained leave to apply for a writ of *certiorari* to remove the decision and award into the High Court for the purpose of its being quashed, on the ground that the whole process of acquisition had become a nullity and that by the time the s. 10 enquiry was conducted, the Collector had no jurisdiction.

The Collector took out a Summons-in-Chambers to have the application disposed off on a preliminary objection, on the ground that the Court had no jurisdiction to grant an order of *certiorari* in respect of an award of compensation made by a Collector in a land acquisition proceeding pursuant to s. 14. Such an award is designed to be and is a purely administrative action. In any event s. 68 ousted the Court's jurisdiction.

Before proceeding to give its decision on the preliminary objection, the Court called upon both sides to complete their arguments on the substantive motion itself, so that if it ruled that the preliminary objection failed, it could proceed to give judgment on the substantive motion.

Held:

A. Jurisdiction

The submission that the Court had no jurisdiction must fail.

[1] The holding of an enquiry pursuant to s. 12 and the making of the award pursuant to s. 14 are not purely administrative in nature but quasi-judicial functions which affect the individual. [*Rex v. Legislative Committee of the Church Assembly* [1928] 1 KB 411, 415; *Rex v. Electricity Commissioners* [1924] 1 KB 171, 204, 205; Privy Council in *Nakkuda Ali v.*

M.F. De s. Jayaratne [1951] AC 66, 78; Professor Jain (Administrative Law of Malaysia & Singapore by M.P. Jain, p. 182); *Ridge v. Baldwin* [1964] AC 40; *Ketua Pengarah Kastam v. Ho Kwan Seng* [1977] 2 MLJ 152; *State v. Kalicharan* AIR 1965 Cal. 638; *Ezra v. Secretary of State for India* 32 Indian Appeals 93 (JC).]

[2] Section 68 does not oust the jurisdiction of the Courts. Words in a statute ousting the power of the High Court to review the decision of an inferior tribunal by *certiorari* must be construed strictly. The power will not be ousted if the inferior tribunal acted without jurisdiction or if its decision is a nullity. [*Anisminic Ltd. v. Foreign Compensation Commission* [1969] 2 AC 147; *South East Asia Fire Bricks Sdn. Bhd. v. Non-Metallic Mineral Products Manufacturers Employees Union & Ors.* [1980] 2 MLJ 165]. Principles of natural justice play an important role in administrative law. [*Ketua Pengarah Kastam v. Ho Kwan Seng* (*Supra*)]. The Court can also interfere on equitable grounds, when an acquisition is against good conscience [*Simpson's Motor Sales (London) Ltd. v. Hendon Corpn.* [1964] AC 1088 at 1126].

B. Merits

[1] The delay of almost 6 years between the s. 8 notification and the s. 10 enquiry caused the s. 8 notice to be exhausted and of no effect, for the valuation of the land made in 1981, based on the date of the s. 8 notification would not provide adequate compensation to the applicants. [*Doongarsee & Sons v. State of Gujarat* AIR [1971] Gujarat 46 at 54; Mysore Court in *Venkatamma v. C.I. Trust Board; State of M.P. v. Vishnu Prasad* AIR [1966] SC 1593; Madras High Court in *Krishna Iyer v. State of Madras* [1967] the Madras Law Journal Report 422]

[2] A compulsory acquisition without adequate compensation is invalid as contravening Article 13 of the Federal Constitution.

[3] The dilatory nature of the proceedings had acted so oppressively on the owners as to make the compensation no compensation at all. The Collector is intended by the Act to complete the process of acquisition expeditiously as otherwise considerable hardship could be imposed on the owners.

[4] The applicants did not waive their rights to move the Court for *certiorari* by resorting first to s. 37 and s. 38 procedures. The power conferred on the High Court by s. 38(5) does not permit it to go into the issues raised in the proceedings. The applicants would not have been able to obtain the remedy they sought, and where an aggrieved party has no other remedy, the Court will grant the order of *certiorari*.

[5] The submission that the applicants had acquiesced in the delay and were estopped from complaining about it through an application for *mandamus* must also fail. It is a general principle of law that an excess of statutory power cannot be validated by acquiescence in or failure to object to the excess, nor by the operation of an estoppel.

[6] In any event there was no reason for the applicants to move in *mandamus*, as by s. 35 the State Authority was entitled to withdraw from its acquisition.

[Accordingly, the award of the Collector was called in and quashed.]

Cases referred to:
Rex v. Legislative Committee of the Church Assembly [1928] 1 KB 411
Nakkuda Ali v. M.F. De S. Jayaratne [1951] AC 66
Ridge v. Baldwin [1964] AC 40
Ketua Pengarah Kastam v. Ho Kwan Seng [1977] 2 MLJ 152

State v. Kalicharan [1965] AIR Cal 638
Ezra v. Secretary of State for India 32 Ind App 93 (JC)
Anisminic Ltd. v. Foreign Compensation Commission [1969] 2 AC 147
South East Asia Fire Bricks Sdn. Bhd. v. Non-Metallic Mineral Products Manufacturers Employees Union & Ors. [1980] 2 MLJ 165
Simpson's Motor Sales (London) Ltd. v. Hendon Corpn. [1964] AC 1088
Doongarsee & Sons v. State of Gujarat [1971] AIR Gujarat 46
State of M.P. v. Vishnu Prasad [1966] AIR SC 1593
Krishna Iyer v. State of Madras [1967] Madras LJ Rep 422

Legislation referred to:
Federal Constitution, art. 13
Industrial Relations Act 1967, s. 29(3)(a)
Land Acquisition Act 1960, ss. 4, (1), 5A(2), 6, (1), 8, 10, (2), 12 to 16, 32, (1), 35, 37, (2), 38(1), (5), 68
Land Acquisition Act [Ind], ss. 4, 6

Other sources referred to:
Professor Jain, Administrative Law of Malaysia and Singapore, M.P. Jain p. 182
Halsbury's Laws of England, 4th Edn., Vol. 1, para. 23

For the applicants - Ghazi Ishak; M/s. Presgrave & Matthews
For the respondent - Lamin H.M. Yunus, State Legal Adviser

JUDGMENT

VC George J:

The applicants are the registered owners of the several parcels of land in the Mukim of Kuala Kuantan, District of Kuantan known as lots 15, 299, 496, 3646, 1091 and 1092.

The Government of the State of Pahang, having pursuant to s. 4 of the Land Acquisition Act 1960, declared its intention to acquire the said lands, published the necessary s. 8 declarations in the *Gazette* dated 29 August 1974 in respect of lots 299 and 3646 and dated 13 February 1975 in respect of the other lots. The enquiry required to be conducted pursuant to s. 10 was commenced only on 16 December 1980 and was completed on 7 January 1981 and the offer of compensation was made by the Collector on 8 April 1981.

The applicants were represented by their solicitors at the enquiry held by the Collector and had submitted that the award of compensation should be on the basis of the market value of the lands as at the time that the enquiry was held. The Collector however made his award at RM7,586,493.75 based on his opinion of the market value of the said lands as at the dates of the s. 8 notifications.

On 2 May 1981 (i.e. within six weeks of the making of the award by the Collector) pursuant to s. 37 and as prescribed by s. 38(1) of the Land Acquisition Act 1960, the applicants filed with the Collector an application that an objection (that the award made by the Collector was grossly inadequate) be referred to the High Court.

Now, the principles relating to the determination of compensation in respect of acquisition of land is laid out in the First Schedule to the Act and applying that Schedule, in the instant case the market value of the said lands has to be as at the date of publication in the *Gazette* of the declaration made under s. 8 which is 29 August 1974 in respect of lots 299 and 3646 and 13 February 1975 in respect of the other lots.

The applicants and their legal advisers were obviously well aware that, when the objections filed pursuant to s. 37 are heard on their being referred to the High Court, the issue would have to be what the true market value of the lands was as on the s. 8 notifications and not as on the date the Collector commenced to hold his enquiry as desired by the applicants. The solution to this frustrating situation, that lent favour to the applicants and their legal advisers was to seek and obtain (which they did) the leave of this Court

> to apply for a Writ of *Certiorari* to remove into the High Court, for the purpose of its being quashed, the decision and award of compensation made by the Pemungut Hasil Tanah ...

The basis of the application appears to be that the whole process of acquisition had become a nullity and when he finally got down to conduct the s. 10 enquiry the Collector had ceased to have jurisdiction to do so.

The learned Legal Adviser for the State of Pahang, acting on behalf of the respondent Collector, took the view that not only were there no merits in the application but it should be disposed of on a preliminary objection and accordingly took out a Summons-in-Chambers (encl. (25) in the file) for that purpose.

Of the four grounds set out in support of the preliminary objection only one could in my opinion be entertained as a preliminary objection which is the contention that the Court has no jurisdiction to grant an order of *certiorari* in respect of an award of compensation made by a Collector in a land acquisition proceeding. The other three grounds were really grounds to be raised in opposition to the application when it was made.

Now in Originating Motion 46 of 1981 where the facts and issues taken were substantially similar to the facts and issues in the instant motion, I had heard a carefully researched and well-presented submission by Tengku Baharuddin Shah, the then State Legal Adviser, where although he was taking the preliminary objection, in fact had dealt comprehensively with the motion to be moved by Encik Shah Balendran of Counsel for the applicants. Encik Shah Balendran in his reply to the preliminary objection in fact had made submissions that tantamounted to moving the motion for an order of *certiorari*.

I had reserved judgment on the Preliminary Objection but before giving my decision called upon Counsel for both sides to complete their arguments (if they had not done so) on the substantive motion itself before I gave my judgment on the preliminary objection so that if I ruled that the preliminary objection failed I could go on to give my judgment on the substantive motion.

In the instant matter Encik Lamin bin H.M. Yunus the State Legal Adviser, for the respondent adopted the submissions that had been made by his predecessor in O.M. 46/81 and went on to add to it. Encik Ghazi Ishak of Counsel for the applicants also supplemented the submissions that had been made by Counsel for the applicants in O.M. 46/81.

Having now heard everything that Counsel had to say, my judgment on the preliminary objection and on the motion for the Order of *Certiorari* is as follows:

Jurisdiction

The contention on behalf of the respondent Collector is that *certiorari* will not lie against an award made by a Collector pursuant to s. 14 of the Land Acquisition Act in that the making of such an award is designed to be and is a purely administrative action. In any event s. 68 of the Act has the effect of ousting the Court's jurisdiction.

The contention on behalf of the respondent is that when the Collector holds his enquiry he is simply collecting facts to make on behalf of the acquiring authority, an offer of compensation to the owner of the land which he may accept or not accept and that such an offer is a purely administrative action and is not a judicial or quasi judicial action. Counsel submitted that the use of the word "award" in s. 14 of the Act was unfortunate and that in fact the Collector does not make any award but only makes an offer. He *inter alia* referred me to the terms of Form H in the Second Schedule to the Act in support of that contention.

The test as to whether the decision of a person or a body of persons is subject to the controlling jurisdiction of a Superior Court was said by Lord Hewart CJ, in *Rex v. Legislative Committee of the Church Assembly* - [1928] 1 KB 411, 415 to be as follows:

> In order that a body may satisfy the required test it is not enough that it should have legal authority to determine questions affecting the rights of subjects; there must be super-added to that characteristic the further characteristic that the body has the duty to act judicially.

Atkins LJ (as he then was) in *Rex v. Electricity Commissioners* - [1924] 1 KB 171, 204, 205, stated

> ... the operation of the writs has extended to control the proceedings of bodies who do not claim to be, and would not be recognised as, Courts of justice. Wherever any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, act in excess of their legal authority they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs.

This statement of Atkins LJ, was held out in the judgment of the Judicial Committee of the Privy Council in *Nakkuda Ali v. M.F. De s. Jayaratne* - [1951] AC 66, 78 as a precise statement of the principle.

The modern trend has been to extend the scope of *certiorari* and impose it as a general remedy for the control of decisions by the Administration affecting the rights of the subject. The *ratio* for this apparent extension of application of the power of judicial review is that whenever there is power to determine questions affecting the rights of the subject there is the duty to act judicially.

Professor Jain - *Administrative Law of Malaysia & Singapore* by M.P. Jain, p. 182 says that the turning point from a restrictive approach to a more liberal approach (which is the modern trend) was the case of *Ridge v. Baldwin* - [1964] AC 40. That case certainly made clear that the authority to determine a question affecting the rights of individuals and the duty to act judicially are not two separate requirements. The power and the duty go hand in hand. In *Ketua Pengarah Kastam v. Ho Kwan Seng* - [1977] 2 MLJ 152 the Federal Court has shown its preference for the modern liberal trend by expressing the view that where an individual is adversely affected by an administrative action the rule of natural justice has to be observed whether the action is "labelled judicial, quasi-judicial or administrative" - at p. 154 of the report.

Sections 12 to 16 of the Act make clear that the Collector in holding his enquiry is clothed with judicial powers and s. 14(1) makes it mandatory for him to prepare a written award which shall be final and conclusive evidence of the value of the land in the opinion of the Collector (s. 14(2)).

It is only after he has made his written award that the Collector is required by s. 16 to offer the amount awarded by him to the owner of the land as compensation. In fact para. 1 of Form H provides for the Collector to state the amount awarded and by para. 2, it is that amount, that has to be offered as "full compensation".

At best it can be said that the implementation of s. 16 of the Act may be a purely administrative action but to my mind there is no question but that the holding of the enquiry pursuant to s. 12 and the making of the award pursuant to s. 14 are quasi-judicial functions which could and do affect the individual.

My attention was drawn to the Indian case *State v. Kalicharan* - AIR 1965 Cal. 638 which held that the Collector making an award under s. 11 of the (Indian) Land Acquisition Act was not acting as a tribunal or a judicial officer. Reading the judgment in that case, I had the distinct impression that the two Judges P. Chattarjee and A.C. Gupta were moved to conclude as they did, not so much from a personal conviction but more because they found themselves bound by an earlier decision of the Indian Supreme Court as well as the advice of the Judicial Committee in *Ezra v. Secretary of State for India* - 32 Ind App 93 (JC). Having referred to those decisions binding on him and his brother, Chattarjee J said, "It is difficult therefore for us to say at the present stage that the Collector while making an award ... was a tribunal." It is to be noted that *Ezra* is a 1905 decision made long before the advancement of the liberal attitude which found the approbation of the House of Lords in *Ridge v. Baldwin* in 1963. Since then there have been a number of Indian decisions including one of the Indian Supreme Court to which I shall be referring to later in this judgment, that have adopted the more liberal attitude.

The learned Legal Adviser argued that it was consistent with his contention that the Collector is not discharging a judicial act when he holds his enquiry and makes the offer of compensation that the Act does not provide an appeal from the Collector but only allows an objection to be raised. I do not think that such a test has merits. In any event in my opinion, the provisions of s. 37 of the Act in fact provide an avenue for the dissatisfied individual affected by the award of the Collector to indirectly appeal to the High Court.

Section 37(2) of the Act provides that where the total amount claimed in compensation does not exceed five hundred ringgit the written award of the Collector shall be final and no objection may be made in respect thereof. This sub-section brings home the need for the Collector to divest himself of his subjective role as a servant or agent of the Government and play the role of an independent tribunal who has to arrive at an opinion in respect of the award he has to make in judicial manner.

My attention was drawn to s. 15 of the Act which empowers the Collector to negotiate a settlement as being inconsistent with the exercise of judicial power. I agree with that submission but hasten to add that it is only with the express consent of the interested party that the Collector may negotiate a settlement. In negotiating a settlement the Collector acts as an agent of the acquiring authority and is not required to make an award. But if s. 15 is not invoked and the Collector in fact holds the enquiry and makes his award the role he plays is very different from that of a negotiator.

Now, the Act provides various conditions that have to be met before the enquiry is held. The land has to be marked out and a note made in the Register of Title. Public Notice in Form E must be given. The enquiry should not be held earlier than 21 days of the publication of the Form E notice. The Notice must be served on the occupier of the land and on any person having a registrable interest in the land. At the date appointed for enquiry the Act requires the Collector to make "full enquiry into the value" and into the respective interests of all persons.

What is the effect of an enquiry that is held where the Collector ignores some or all of the above requirements imposed by the Act? What is the effect of an enquiry that is held by a Collector who does not observe the principles of natural justice? And in this context, what is the effect of s. 68 of the Act which reads, "No suit shall be brought to set aside an award or apportionment under this Act."

Dealing first of all with the effect of s. 68 reference has to be made to the decision of the House of Lords in *Anisminic Ltd. v. Foreign Compensation Commission* - [1969] 2 AC 147 which was cited with approval by the Privy Council in *South East Asia Fire Bricks Sdn. Bhd. v. Non-Metallic Mineral Products Manufacturers Employees Union & Ors.* - [1980] 2 MLJ 165. *Anisminic* shows that when words in a statute oust the power of the High Court to review decisions of an inferior tribunal by *certiorari* they must be construed strictly and they will not have the effect of ousting the power if the inferior tribunal has acted without jurisdiction or if it has done or failed to do something in the course of the enquiry which is of such a nature that its decision is a nullity. *South East Asia Fire Bricks* shows that even the wide scope of s. 29(3)(a) of the Industrial Relations Act, 1967 has not the effect of completely ousting *Certiorari* and it follows that s. 68 of the Land Acquisition Act cannot by any means be said to do so. In fact when s. 68 is read with the proviso to s. 11 it is seen that the Legislators have given tacit recognition of the prerogative jurisdiction of the Courts. The proviso is as follows:

> Provided that no omission or failure to serve such notice upon any person falling under paras. (b) or (c) shall invalidate any enquiry held pursuant to the notice or any award made upon the conclusion of the enquiry if, by reason of damage or deterioration of the register document of title to such land, such person cannot be ascertained.

It recognises that the enquiry held by the Collector is always subject to review as to its validity. And particularly because of the terms of s. 68 such a review could only be carried out in the Court's prerogative jurisdiction.

As to the non-observance of the principles of natural justice it is sufficient to again quote from the judgment of Raja Azlan Shah FJ (as he then was) in *Ketua Pengarah Kastam v. Ho Kwan Seng* - *Supra* at p. 153.

> The principles of natural justice that no man may be Judge in his own cause and that no man may be condemned unheard today play a very prominent role in administrative law, particularly since the House of Lords invigorated them by a strong decision in *Ridge v. Baldwin*. The second principle is the rule requiring a fair hearing. This is of central importance because it can be used to construe a whole code of administrative procedural rights. The principle has a long history. One of the most famous cases is *Bentley's* case in 1723, in which it was held that the University of Cambridge could not deprive that great but rebellious scholar of his degrees without hearing his excuses for his misconduct: see *R. v. University of Cambridge.* In *Cooper v. Wandsworth Board of Works* damages were awarded against a local authority which demolished a building erected without due notification, although they did only what the statute said that they might do in such circumstances. The essence of this and many other such cases is that drastic statutory powers cannot be intended to be exercised unfairly, and that fairness demands at least the opportunity of a hearing. The Courts clung to this principle as the powers of Government expanded, and applied it frequently in many fields such as housing law, compulsory purchase of land and dismissal from public offices.

In *Simpson's Motor Sales (London) Ltd. v. Hendon Corpn.* [1964] AC 1088 at 1126, Lord Evershed said:

> I should, I hope, be the last to suggest that the proper application and, where necessary, extension of equitable principles in the present day and age, when so much human activity is governed and controlled by legislation, should be restricted and I have in mind the picturesque language once used by Harman LJ when he said that he thought that equity was not presumed to be of an age past childbearing.

In *Simpson's*, delays occurred in effecting a compulsory purchase order and the House of Lords observed, *inter alia*, that the Court might in its equitable jurisdiction interfere with the enforcement by an acquiring authority of their legal rights where it could be shown that there had been on their part something in the nature of bad faith, some abuse of their power and/or some alteration in the owners' position which was unfair in the particular circumstances. To succeed under this head of equity it must be shown that the effect of the acquisition would in some real sense be against good conscience.

The Courts not only have the power but will readily use such power to quash administrative decisions which were arrived at without due observance of the requirements of the statute under which the decision was purported to have been arrived at or which was arrived at without due observance of the principles of natural justice if it can be shown that the effect of the decision is in some real sense against good conscience.

Accordingly, the bald submission that the Court has no jurisdiction to entertain the motion in *certiorari* fails.

Merits

I now have to consider whether on the facts of the instant case the applicants are entitled to the orders sought in the substantive motion before me.

The complaint is that the delay between the s. 8 notification and the making of the award was so great (about 6 years) that this Court in exercising its powers of review should quash "the decision and award of compensation made by the Pemungut Hasil Tanah".

In considering a complaint such as this the Court has to keep in view on the one hand the public interest which compels the acquisition of land and on the other the interest of the persons who are being deprived of their lands without their consent.

The exercise of acquisition of land commences with the s. 4 notification. At that stage the State Authority need not necessarily have a clear picture of the extent of the land that it needs to acquire. The s. 4 notification serves the purpose of making it possible for the servants and agents of the State Authority to enter into the lands to help complete the necessary investigations to enable the State Authority to decide whether in fact it wants to acquire the land and if so the exact position and extent of the lands that is needed. Once this decision is taken the s. 8 notification is made which by subsection 3 thereof is conclusive evidence that all the lands referred to in the notification is needed by the State Authority.

Now that First Schedule to the Act provides that the compensation to be awarded will be the market value of the lands as on the date of the s. 4 notification unless the s. 8 notification was made 12 months later than the s. 4 notification in which case the market value is as on the date of the s. 8 notification.

It is relevant to note *en passant* that it is specifically provided for, that any improvements made to the lands after those notifications shall not be taken into account in assessing market value and that s. 32 of the Act provides for the payment of interest at 6% per annum on the compensation awarded from the date of taking into possession until the payment or deposit of the amount awarded and not from the date of one or the other of the notifications. The taking of possession is normally effected after the award is made.

In India the provisions of their Land Acquisition Act is not dissimilar to ours. But in that country the compensation to be paid is to be valued as at date of the notification of the equivalent to our s. 4 notification (which happens to be s. 4 of their Land Acquisition Act). The equivalent of our s. 8 is their s. 6 and a notification under s. 6 is a necessary prelude to the holding of the enquiry for the award of compensation to be made. Complaints have been brought to the Indian Courts in respect of delay on the part of the Collector in issuing the s. 6 notification. In *Doongarsee & Sons v. State of Gujarat* - [1971] AIR Gujarat 46 at 54, a portion of the judgment reads:

> The question whether the Government is bound to make a declaration under s. 6 without unreasonable delay after the issue of s. 4 notification rests on a proper interpretation of ss. 4, 5A and 6 in the context of the scheme of the Act. But this question is no longer open to doubt or debate at least so far as this Court is concerned. We have held in our judgment delivered on 18 March 1969 in Special Civil Appln. No. 729 of 1968 (Guj) that the declaration under s. 6 in order to be valid must follow within a reasonable time after the issue of s. 4 notification. It therefore remains to consider whether the time that elapsed between s. 4 notification and the second s. 6 notification could be regarded as reasonable on the facts and circumstances of the present case. The notification under s. 4 was issued on 20 May 1961 and the second s. 6 notification on 6 June 1966 and there was thus an interval of about five years between the two notifications. We do not think this interval of time could be regarded as reasonable. The first s. 6 notification was issued on 29 April 1963 after holding the requisite enquiry and considering the report of the Collector under s. 5A, sub-section (2). This notification was clearly valid - and indeed as pointed out above, this position was not disputed by the learned Advocate General on behalf of the State - and the Special Land Acquisition Officer actually proceeded to make an award dated 21 December 1963 determining the amount of compensation payable to the petitioners in respect of the acquisition of their lands under this notification but before the acquisition could be completed the Government, for some reason which it is difficult to divine, cancelled this notification on 28 April 1966. There was obviously no justification for cancelling the first s. 6 notification and even if the Government wanted to cancel the first s. 6 notification and substitute it by the second s. 6 notification, there was no reason why the Government should have waited from 29 April 1963 upto 6 June 1966. The delay from the date of the award, namely, 21 December 1963, upto the date of cancellation, namely 28 April 1966, was in any event totally inexplicable. The total period which elapsed between s. 4 notification and the second s. 6 notification was about five years and this can in no view of the matter be regarded as reasonable. Even tested by the yard-stick of reasonable time provided by the Legislature in the second proviso introduced in s. 6 by the Land Acquisition (Amendment and Validation) Act, 1967, namely, three years, the period of about five years would be clearly unreasonable. The Government cannot be permitted to trifle with the property rights of the citizen. The second s. 6 notification must therefore be held to be invalid on this ground also.

A Full Bench of the Mysore Court in *Venkatamma v. C.I. Trust Board* referred with approval to that part of the judgment in *Doongarsee* reproduced heretofore *viz*:

Before concluding we propose to refer to one other aspect of the matter. If we accept the contention of the Special Land Acquisition Officer that the market value prevailing in 1945 should be taken as the basis, then the acquisition of the properties in these cases might itself become unconstitutional. It would not be just and reasonable to give compensation for a property acquired by a public authority, on the basis of its market value prevailing some fifteen or twenty years before the date of taking possession. We may refer here to a decision of the High Court of Gujarat in *M/s. Doongarsee and Sons v. State of Gujarat* (AIR 1971 Guj. 46) in which it is observed that a declaration under s. 6 of the Acquisition Act in order to be valid must follow within a reasonable time after the issue of s. 4 notification. In that case s. 4 notification was issued on 20 May 1961 and s. 6 notification was issued on 6 June 1966 and thus there was an interval of about five years between the two notifications. It was held that a five year interval of time was unreasonable. In the cases before us, as already stated the interval between the notification under s. 16 and the notification under s. 18 of the Act is nearly fifteen years.

The Indian Supreme Court in State of *M.P. v. Vishnu Prasad* - AIR [1966] SC 1593, said:

Two things must be borne in mind while construing ss. 4, 5A and 6. The first is that the Act provides for a acquisition of land of persons without their consent and in such case the provisions of the statute must be strictly constructed. Secondly, in interpreting these provisions the Court must keep in view on the one hand the public interest which compels such acquisition and on the other the interest of the person who is being deprived of his land without his consent. It is open to the appropriate Government to issue as many notifications as it deems fit under s. 4(1) even with respect to the same locality followed by a proper notification under s. 6 so that the power of the appropriate Government to acquire land in any locality is not exhausted by the issue of one notification under s. 4(1) with respect to that locality. On the other hand as the compensation has to be determined with reference to the date of the notification under s. 4(1) the person whose land is to be acquired may stand to lose if there is a great delay between the notification under s. 4(1) and the notification under s. 6 in case prices have risen in the meantime.

Vishnu Prasad was relied on by the Madras High Court in *Krishna Iyer v. State of Madras* - 1967 Madras LJ Rep 422 in which case there was a delay of nearly four years between the s. 4 notification and the s. 6 notification. Extracts from that judgment also bear repeating *viz*:

Viewing the objections catalogued above to the acquisition proceedings, I am of the opinion that in regard to the first objection mentioned above, though the statute does not prescribe any time-limit for issuing the s. 6(1) declaration after the publication of the s. 4(1) notification or for passing an award at a subsequent stage, that circumstances does not deprive the aggrieved party of a remedy, where undue prolongation of the proceedings has operated in an oppressive manner on the owner of the land especially in circumstances where land values have increased by leaps and bounds in the intervening time ... Taking all the aforesaid circumstances into account, I am of the opinion that this is a case where the requirement of law as well as the requirement of paying adequate compensation can be adequately met only if the proceedings taken hitherto are quashed and a fresh notification issued under s. 4(1) and proceedings taken in regard to the petitioner's land. Accordingly the petition is allowed and the impugned notification is quashed.

The learned Legal Adviser submitted that in many of the sections of the Act the time within which the Collector is required to perform particular steps in the acquisition process is specified e.g. s. 12 where the Collector after holding his enquiry "shall as soon as possible thereafter assess the amount of compensation ..." and argued that the omission of words of similar effect in s. 10 is significant.

The Land Acquisition Act has to be read together with Article 13 of the Federal Constitution which provides that no person may be deprived of property save in accordance with law and that no law may provide for the compulsory acquisition or use of property without adequate compensation. And the Act thus read makes obvious that the implementation of the various sections of the Act must be effected to the end *inter alia* that the subject who is deprived of his property is provided with adequate compensation. And if the delay between the s. 4 or s. 8 notifications and the holding of the enquiry results in compensation awarded being in fact inadequate, one is led to the irresistable conclusion that such a delay is inconsistent with the scheme of the Act. Any other interpretation of the scheme of the Act would make the Act to be in contravention of Article 13 of the Constitution and as such invalid.

In my view in any event, the effect of our s. 10(2) of the Act is to emphasise the need for an early hearing but with a proviso that the need for expediency should not be at the expense of giving a reasonable opportunity (a period of not less than 21 days) for all interested persons to have notice that the enquiry is to be held. Once the actions required to be taken by s. 9 have been completed it seems to me that the draftsman of the Act could see no proper reason for any delay in holding the enquiry forthwith save that a reasonable opportunity be given for all interested persons to have notice of the holding of the enquiry.

Looking at the Land Acquisition Act as a whole including s. 32 and Clause 1 of the First Schedule to that Act, I have no doubt in my mind that the intention of the Legislators was to provide that period (which could extend for over 12 months) between the s. 4 notification and the s. 8 notification, for the State Authority to make up its mind with some finality as to what and how much of the land was needed for acquisition but thereafter the Collector was expected to complete the process expeditiously as otherwise, particularly when land values were appreciating hysterically, considerable hardship could be imposed on the owners of the lands acquired.

In my judgment compensation will not necessarily be adequate if it is not assessed and paid within a reasonable time of the s. 8 notification. That, a delay of over 12 months between the s. 4 notification and the s. 8 notification could cause hardship if the market price is to be as at the date of the s. 4 notification is in fact recognised by the Act and hence the provision that the market price should be as on the date of the s. 8 notification if more than 12 months had lapsed after the s. 4 notification. The Act itself in effect suggests that a period more than 12 months would be unreasonable.

It cannot be denied that with the amount of money representing the market value in February 1975 the applicants cannot in April 1981 hope to purchase in substitution for the lands to be taken away from them, a fraction of the acreage they have been deprived of because of appreciation of land values.

I cannot but accept that in Malaysia, almost without exception, there has been significant appreciation of land values between 1975 and 1980. Although it has not been tested, there is some evidence before me that the market value of the lands which were the subject of the acquisition had more than doubled during those 6 years. I find as a fact the dilatory nature of the proceedings has acted so oppressively on the owners of the land so as to make the compensation eventually awarded to them based on 1975 values to be no compensation at all.

It was argued by learned Counsel for the respondents that *certiorari* being a discretionary remedy, in any event the aplicants' conduct precludes them from having the order sought.

It was submitted that by the applicants resorting to the s. 37 and s. 38 procedures of having the quantum of the award referred to the High Court they have waived any rights they may have had to move the Court for *certiorari*. It was also suggested that the applicants had acquiesced in the delay on the part of the Collector. *Mandamus* was available to them but they chose not to utilise that right and are now estopped from complaining about the delay.

It is a general principle of law that an excess of statutory power cannot be validated by acquiescence in or failure to object to the excess or by the operation of an estoppel. (See *Halsbury* 4th Edn. Vol. 1, para. 23). In any event I see no call for the applicants to move in *mandamus* particularly as by s. 35 of the Act the State Authority was entitled to withdraw from the acquisition.

As to the effect of the resort to the procedures laid out by ss. 37 and 38 I respectfully follow the judgment of Raja Aziz Addruse sitting as a Judicial Commissioner in Penang O.M. 16/80 where in dealing with an application for stay of proceedings seeking to quash the award of compensation in a land acquisition case until the s. 38 proceedings were completed, he said at p. 3 - "For the purpose of determining whether or not the application to stay should be granted, it is necessary that I consider what powers the High Court has when hearing the reference made under s. 38(5) of the Act, in particular, whether the High Court can, at the hearing of the reference, deal with the several issues raised in the present proceedings, bearing in mind that the Court ought not to refuse to grant an order of *certiorari*, unless it is clearly satisfied that there are other remedies available to the applicants which are more appropriate. The law on this referred to in *Baldwin Francis Ltd. v. Patents Appeal Tribunal*, where, Lord Denning, after stating the general rule that the issue of *certiorari* is a matter of discretion for the High Court, said:

> ... a subsidiary rule has been laid down to the effect that where the applicant is a party grieved who has no other remedy, the Court will grant the Order of *Certiorari ex debito justitiae*: See Reg. Surrey Justices, *Reg. v. Manchester Legal Aid Committee*.'

The power conferred on the High Court by s. 38(5) of the Land Acquisition Act 1960 does not, in my view, permit it to go into the issues raised in these proceedings, namely:

(a) whether the Collector's award ought to be quashed by reason of failure on the part of the Collector to observe the rules of natural justice when conducting his enquiry; and

(b) the other issues raised by the applicants in these proceedings which this Court will have to consider.

I am, therefore, of the view that the applicants will not be able to obtain the remedy they seek by these proceedings, in the reference under s. 38(5) of the Act. For that reason, the application of the respondents to stay these proceedings should be dismissed, and I accordingly dismissed it.

In any event there was evidence that the Collector was informed that inspite of the s. 37 procedures being adopted, the applicants intended to proceed in *certiorari*.

In the Indian Supreme Court case, *State of M.P. v. Vishnu Prasad - Supra*, a s. 4 notice was given on 16 May 1949. In 1956 a number of notifications equivalent to our s. 8 notification were issued in respect of certain parcels of lands that were part of the lands under the s. 4 notification. These lands were duly acquired. Then in 1960 another notification equivalent to our s. 8 notification was issued in respect of 486.17 acres which was part of the original s. 4 notification. A petition was taken out challenging the validity of this notification the petitioner successfully contending that notice of 1960 was void as it was not preceded by a fresh s. 4 notification.

Vishnu Prasad demonstrates how a s. 4 notice can be exhausted and how a s. 8 notification may be void.

In my judgment in the instant case the delay of almost 6 years between the s. 8 notification and the holding of the s. 10 enquiry caused the s. 8 notice to be exhausted and of no effect, for the valuation of the land made in 1981, based on the date of the s. 8 notification would not provide adequate compensation to the applicants. Accordingly, the award of the Collector is hereby called in and quashed. I also order that the applicants shall be entitled to the costs of and incidental to the application and to the preliminary objection as taxed by the proper officer of this Court.

Also found at [1983] 2 CLJ 30